

NEW REGIME FOR INDUSTRIAL REGULATION - CAIADO GUERREIRO & ASSOCIADOS

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Over the past 30 years, surveillance and inspection of industrial activity in Portugal has been mainly absent. The concrete enforcement of industrial regulation is a joint responsibility of the State and the Municipalities and their cooperation has not always been exemplary. With the

growth of administrative regulation, particularly as a consequence of European law, several companies found themselves operating in an irregular manner and never rectified the situation.

With the Decree Law n. 165/2014, dated 5 November, the state intends to give companies the possibility of 'regularising' their licenses, knowing that the ultimate legal consequence of functioning without such licenses implies the permanent shutting down of the activity of the company.

The new Decree Law creates a mechanism allowing the regularisation of units of production without a proper license due to, namely, regional and national administrative regulation.

It applies to all applications on industrial activities, livestock activities, residue management and mineral extraction. This new regulation exists temporarily and is applicable for one year (it expires 1 January 2016). It does not fully replace the main regimes; the original regulation "Responsible Industry System" (SIR - Sistema da Indústria Responsável) still applies as subsidiary regulation. The SIR regulates the industrial activity, as well as the installation and operation in responsible companies' zones – ZER (Zonas Empresariais Responsáveis) and the accreditation of entities.

This diploma defines several types of companies (type 1, type 2 and type 3) so that each type is subject to a different procedure. Companies may apply for an authorisation, modification of their former authorisation or enlargement of their former authorisation until the 1 January, 2016.

Applications for authorisation are sent electronically on the platforms already made available by the subsidiary regulation.

The receipt of the submission of the application amounts to a temporary authorisation, valid until the final decision is notified. This receipt is issued once all tariffs stated in the subsidiary regimes are paid.

The administrative infractions due to the lack of license or to the violation of environmental rules or territorial management are suspended from the date of issue of the application receipt. If the administrative procedures for the infractions commence after the issuing of the receipt, they are considered as suspended from the date of notification. The restrictive measures are also suspended from the date of issue of the receipt.

The granting of an industrial license through the issuing of a final decision terminates the infraction procedures that were suspended. When the decision from the administration is favorable, or favorable but subject to some conditions, the company has 2 years to initiate the correct licensing procedures, otherwise the authorisation given by this regime will no longer be valid.

The main innovations of this temporary regime are:

- 1) The automatic suspension of the companies that do not comply with legal demands from the moment of the submission of the regularisation application
- 2) The retroactive termination of the identified irregularities from the moment of the issuance of the favourable decision from the administration
- 3) The automatic regularisation of the companies from the moment of the submission of the application.

Several reasons may have concurred for the creation of this regulation. This diploma may be an attempt to make the Portuguese industrial network attractive to foreign investment. It may also be that this regulation will allow the state to update their database regarding irregular situations. In any case, the new legislation is an exceptional opportunity to regularise administrative licenses and to function normally under national and European Legislation.

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